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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,066	03/26/2004	Ronald F. LaBruno	2188P0500US	8079
41528	7590	04/06/2006	EXAMINER	
THE LAW OFFICE OF RANDALL T. ERICKSON, P.C. 425 WEST WESLEY STREET, SUITE 1 WHEATON, IL 60187			EWALD, MARIA VERONICA	
			ART UNIT	PAPER NUMBER

1722

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,066	Applicant(s) LABRUNO ET AL.	
	Examiner Maria Veronica D. Ewald	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/10/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

13. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the lines, numbers and letters are not uniform, clean and well defined (of a generally poor quality) in each of the eight figures (37 CFR 1.84(l)).

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Koppens (U.S. 4,634,362). Koppens teaches a food patty-forming apparatus for forming food patties from pressurized food product, comprising: a frame (column 2, lines 30 – 33); a first surface carried by said frame (item 4 – figure 1; column 2, lines 30 – 36); a second surface carried by said frame, said second surface spaced from and facing said first surface (item 2 – figure 1; column 2, lines 30 – 36); a source of pressurized food

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product (item 1 – figure 1; column 2, lines 30 – 31); a mold plate guided to reciprocate longitudinally between said first and second surfaces between a fill position and a discharge position (item 5 – figure 1; column 2, lines 35 – 40), said mold plate having at least one cavity that is open to said source of pressurized food product through said second surface when in said fill position (figure 1; column 2, lines 43 – 50) and that is outside said first and second surfaces when in said discharge position (figure 1; column 2, lines 43 – 50), and a mold pattern arranged on one first face of said cavity, said mold pattern comprising open areas and solid areas, said solid areas having a position extending in a non-longitudinal direction (figure 4; column 2, lines 63 – 67; column 3, lines 1 – 10); and a mechanism operatively connected to said mold plate to reciprocate said mold plate between said fill position and said discharge position (column 2, lines 35 – 38); wherein the apparatus is further comprised of a knockout plunger having open areas corresponding to said solid areas of said pattern and solid areas corresponding to said open areas of said pattern, and shaped to allow said solid areas of said plunger to penetrate into said cavity past said first face of said cavity (column 3, lines 23 – 33); wherein said cavity is open to said source of pressurized food through a second face of said cavity on a side of said cavity opposite said first face (figure 1; column 3, lines 1 – 8) and wherein said second surface comprises breather holes for venting air during filling of said cavity (figures 1 and 3).

In addition, the reference teaches that the solid areas of said pattern comprise a cross shape (figure 4); wherein said solid areas of said plunger comprise a cup configuration (column 3, lines 23 – 33); wherein said solid portions of said pattern

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comprise curved portions (figure 4); and wherein said solid portions of said pattern comprise oblique portions (figure 4).

In addition, the reference teaches that the solid portions of said pattern are carried on an insert plate that is fastened to surrounding portions of said mold plate and wherein said insert plate comprises an outside surface facing away from said cavity that is flush with a surrounding surface of said mold plate (column 2, lines 63 – 68; column 3, lines 1 – 8).

With respect to claims 11 – 20, Koppens teaches a tooling for an apparatus that includes a mold plate having a patty-forming cavity for a food patty-forming apparatus for forming food patties from pressurized food product (figure 1), the apparatus having food product delivery configured to deliver pressurized food product into a fill opening (column 2, lines 33 – 40), a mechanism operatively connected to said mold plate to reciprocate said mold plate between a fill position wherein said cavity is open to said fill opening to receive pressurized food product, and a discharge position wherein said cavity is exposed (column 2, lines 42 – 50), the tooling comprising a mold plate having a cavity having a first open face and an opposite second open face on opposite sides of said mold plate (column 2, lines 63 – 68), a mold pattern arranged adjacent said first open face of said cavity (figure 4), said mold pattern comprising open areas and solid areas (figure 4), said solid areas recessed from said second open face of said cavity, said solid areas having a portion that extends in a non-longitudinal direction (figure 4); wherein the apparatus is further comprised of a knockout plunger having open areas

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corresponding to said solid areas of said pattern and solid areas corresponding to said open areas of said pattern, and shaped to allow said solid areas of said plunger to penetrate into said cavity past said first face of said cavity (column 3, lines 23 – 33). In addition, the said cavity is openable to said food product delivery through said second open face of said cavity (column 2, lines 33 – 35) and the apparatus is further comprised of a breather plate configured to guide reciprocation of said mold plate and having breather holes for venting air during filling of said cavity (figures 1 and 3; column 2, lines 42 – 50).

In addition, the solid areas of said pattern comprise a cross shape (figure 4); wherein said solid areas of said plunger comprise a cup configuration (column 3, lines 23 – 33); wherein said solid portions of said pattern comprise curved portions (figure 4); and wherein said solid portions of said pattern comprise oblique portions (figure 4).

In addition, the reference teaches that the solid portions of said pattern are carried on an insert plate that is fastened to surrounding portions of said mold plate and wherein said insert plate comprises an outside surface facing away from said cavity that is flush with a surrounding surface of said mold plate (column 2, lines 63 – 68; column 3, lines 1 – 8).

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Veronica D. Ewald whose telephone number is 571-272-8519. The examiner can normally be reached on M-F, 8 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph S. Del Sole
JOSEPH S. DEL SOLE
PRIMARY EXAMINER
4/3/06

MVE